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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/487,027	01/19/2000	Paul E. Di Mario	5333USA	2627

7590 07/31/2003

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EXAMINER

HARMON, CHRISTOPHER R

ART UNIT

PAPER NUMBER

3721

DATE MAILED: 07/31/2003  
22

Please find below and/or attached an Office communication concerning this application or proceeding.

NY

<b>Office Action Summary</b>	Application No.	Applicant(s)	
	09/487,027	DI MARIO ET AL.	
	Examiner	Art Unit	
	Christopher R Harmon	3721	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

1) Responsive to communication(s) filed on 24 June 2003.

2a) This action is FINAL. 2b) This action is non-final.

3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

4) Claim(s) 1-9,35,36 and 38-50 is/are pending in the application.

4a) Of the above claim(s) 41-50 is/are withdrawn from consideration.

5) Claim(s) \_\_\_\_\_ is/are allowed.

6) Claim(s) 1-9,35,36 and 38-40 is/are rejected.

7) Claim(s) \_\_\_\_\_ is/are objected to.

8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

9) The specification is objected to by the Examiner.

10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

11) The proposed drawing correction filed on \_\_\_\_\_ is: a) approved b) disapproved by the Examiner.

If approved, corrected drawings are required in reply to this Office action.

12) The oath or declaration is objected to by the Examiner.

**Priority under 35 U.S.C. §§ 119 and 120**

13) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a) All b) Some \* c) None of:

1. Certified copies of the priority documents have been received.
2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

14) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).

a) The translation of the foreign language provisional application has been received.

15) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

**Attachment(s)**

1) <input type="checkbox"/> Notice of References Cited (PTO-892)	4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). _____
2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)	5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)
3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____	6) <input type="checkbox"/> Other: _____

**DETAILED ACTION**

***Election/Restrictions***

1. Newly submitted claims 41-50 are directed to an invention that is independent or distinct from the invention originally claimed for the following reasons: the limitations are directed towards a box erecting apparatus. Claims 1-9, 35-36, and 38-40 do not require the box erecting apparatus to contact a first and second wall, etc. Thus the inventions are related as subcombinations disclosed as usable together in a single combination. The subcombinations are distinct from each other if they are shown to be separately usable. In the instant case, the originally claimed invention has separate utility such as lifting goods between two positions and supporting goods while returning the lift to a loading position. See MPEP § 806.05(d).

Since applicant has received an action on the merits for the originally presented invention, this invention has been constructively elected by original presentation for prosecution on the merits. Accordingly, claims 41-50 are withdrawn from consideration as being directed to a non-elected invention. See 37 CFR 1.142(b) and MPEP § 821.03.

***Claim Rejections - 35 USC § 102***

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claims 1-5, 35-36, and 38-40 are rejected under 35 U.S.C. 102(b) as being anticipated by Graham et al. (US 4,179,866).

Graham et al. disclose a case packer comprising a box erecting apparatus (not shown in detail, see column 1, lines 35-38 - inclusion of US 3,739,696), elevator lift apparatus supported by cylinder 30, support mechanisms 43 and 44, case sealer/gluer 52, case magazine/supplier 6; see figures 8-10. The elevator lifts at least one good 24 into opened-bottom erected cases (cardboard) 11 and returns to a loading position after support mechanisms 43 and 44 directly support the products in the case 11 substantially over the top of the elevator mechanism; see figure 10. The support mechanisms 43 and 44 operate between two positions; see figures 9-10. The box top flaps are also folded; see column 3, lines 3-8. Box erector apparatus comprises suction cups 47 and 50; see US 3,739,696 (incorporated by Graham et al.)

#### ***Claim Rejections - 35 USC § 103***

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 6-9 are rejected under 35 U.S.C. 103(a) as being unpatentable over Graham et al. (US 4,179,866) in view of Reinfeld et al. (US 4,550,549).

The invention of Graham et al. does not specifically include a labeling apparatus operatively connected to the finishing apparatus. Reinfeld et al. teach a labeling apparatus in the apparatus and method of packing articles operating on completed containers 52 along discharge conveyor 80; see figure 14, column 5, lines 52-56. It would have been obvious of one of ordinary skill in the art to include the use of a labeling apparatus as taught by Reinfeld et al. in the invention of Graham et al. in order to mark a package as desired.

Regarding the limitations of a first and second feed conveyors of claims 7 and 8, Graham et al. disclose first load conveyor 21 and second conveyor 26 on separate planes.

***Response to Arguments***

6. Applicant's arguments filed 6/24/03 have been fully considered but they are not persuasive. In Graham et al. the ends of supports 43 and 44 would be in direct contact with the at least one good once the elevator supports 28 are removed from the interior of the box. The flaps 17 and 18 are closed however do not extend the length of the supports.

***Conclusion***

7. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within

TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Christopher R Harmon whose telephone number is 703-308-8643. The examiner can normally be reached on Monday-Thursday from 8-6.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Rinaldi Rada can be reached on 703-308-2187. The fax phone numbers for the organization where this application or proceeding is assigned are 703-872-9302 for regular communications and 703- 872-9303 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-1148.



EUGENE KIM  
PRIMARY EXAMINER

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July 29, 2003